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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

FLIR SYSTEMS, INC., an Oregon
corporation,

Plaintiff,

vs.

THOMAS L. GAMBARO, an individual
d/b/a **PATENT ENFORCEMENT
COMPANY; MOTIONLESS
KEYBOARD COMPANY**, an Oregon
corporation.

Defendants.

Civil No.: 3:10-cv-00231-BR

**PLAINTIFF FLIR SYSTEMS, INC.'S
MOTION FOR PROTECTIVE
ORDER**

LR 7-1(a) CERTIFICATION

The undersigned counsel certifies that the parties have made a good faith effort through personal or telephone conferences to resolve the dispute over whether a protective order is needed and were unable to do so.

Motion for Protective Order

For the reasons discussed in FLIR's Status Report on Protective Order and supporting Declaration of Thomas Scanlon, FLIR submits that entry of a protective order in the form attached as Exhibit 1 is warranted. Defendant Gambaro disagrees. Defendant Motionless Keyboard Company ("MKC") is currently represented by James Buchal, but Mr. Buchal has informed the undersigned that review of a protective order is beyond the scope of his engagement by MKC.

The protective order attached as Exhibit 1 differs from the proposed protective order attached to FLIR's Status Report on Protective Order in the following respects:

1. The word "proposed" is deleted.
2. Since no documents have been produced which any party wishes to designate as "CONFIDENTIAL – OUTSIDE COUNSELS' EYES ONLY," Paragraph 9 has been deleted, resulting in renumbering of all successive paragraphs.
3. In recognition of the fact that Defendant Gambaro is not currently represented by counsel and the scope of MKC's representation is limited, FLIR has added the following unnumbered paragraph to the section denominated "Purpose and Limitations":

“This Order is subject to amendment as circumstances warrant. If, for example, material is designated as ‘CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY’ at a time when the requesting party is not represented by counsel, at the request of such party, this Court will conduct an in camera review of such material and determine at that time how such material will be handled, consistent with the legitimate interests of the designating party in maintaining confidentiality of the material and consistent with the legitimate interests of the requesting party in having access to material relevant to the defense of claims and prosecution of counterclaims in this action.”

FLIR is hopeful that the need to produce highly sensitive material will be alleviated by two motions it intends to file at such time as this Court may lift its moratorium on further motions:

1. A motion for partial summary judgment establishing that Defendant Gambaro is precluded from contesting in this action the claim construction reached in *Motionless Keyboard Co. v. Microsoft Corp.*, No. Civ. 04-180-AA, 2005 WL 1113813, * (D Or May 6, 2005) and affirmed in *Motionless Keyboard Co. v. Microsoft Corporation*, 486 F3d 1376 (2007).

2. A motion to bifurcate liability and damages, and to stay discovery of damages pending adjudication of the question of whether FLIR is liable for patent infringement.

FLIR submits that, if it is ever compelled to produce material which it believes should be designated “CONFIDENTIAL – OUTSIDE COUNSELS’ EYES ONLY” and if the requesting defendant is unrepresented at that time, this Court could order an *in*

camera inspection of such materials or such other relief as it may deem appropriate at that time.

DATED this 6th day of August, 2010.

BICKEL & BREWER

William A. Brewer, III, *Admitted Pro Hac Vice*

Michael J. Collins, *Admitted Pro Hac Vice*

Farooq A. Tayab, *Admitted Pro Hac Vice*

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By: /s/ Susan D. Marmaduke

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Of Attorneys for Plaintiff FLIR Systems,
Inc.

CERTIFICATE OF SERVICE

I certify that on August 6, 2010, I served or caused to be served a true and complete copy of the foregoing **PLAINTIFF FLIR SYSTEMS, INC.'S MOTION FOR PROTECTIVE ORDER** on the party or parties listed below as follows:

_____ Via CM / ECF Filing
_____ Via First Class Mail, Postage Prepaid
_____ Via Email
_____ Via Personal Delivery

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individually and dba
Patent Enforcement Company
and Motionless Keyboard Company
P.O. Box 14741
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